

ENTERED

February 05, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOHNNY FLORES,	§
	§
Petitioner,	§
VS.	§ CIVIL ACTION NO. 2:20-CV-70
	§
DIRECTOR TDCJ-CID,	§
	§
Respondent.	§

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Petitioner Johnny Flores, proceeding pro se, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. D.E. 2. Flores challenges his conviction and life sentence for murder by arguing ineffective assistance of counsel and violations of the Eighth Amendment. Respondent filed a motion for summary judgment contending that: (1) Flores failed to exhaust his Eighth Amendment claim that his trial counsel coerced him into not testifying at trial; (2) the state court's denial of Flores's ineffective assistance of counsel claim was reasonable; and (3) the state court's denial of Flores's Eighth Amendment claim regarding his mental state to commit the crime and to stand trial was reasonable. D.E. 14.

United States Magistrate Judge Julie K. Hampton issued a Memorandum and Recommendation (M&R), recommending that the Court grant Respondent's motion, dismiss the petition, and deny a certificate of appealability. D.E. 23. Pending before this Court are Flores's objections to the M&R, along with his motion for an evidentiary hearing. He also filed an unsworn declaration (D.E. 29) and a "Special Appeal[a]rance

Responce [sic]; In Respect to Court(s) ‘Order’” (D.E. 30). Even if these documents were timely, they do not offer information that would affect the Court’s decision. D.E. 26, 27. For the following reasons, the Court DENIES the request for evidentiary hearing, OVERRULES the objections, and ADOPTS the findings and conclusions of the Magistrate Judge.

DISCUSSION

Standard. The district court conducts a de novo review of any part of the magistrate judge's disposition that has been properly objected to. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(3); *Warren v. Miles*, 230 F.3d 688, 694 (5th Cir. 2000). As to any portion for which no objection is filed, a district court reviews for clearly erroneous factual findings and conclusions of law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam).

Flores’s Objections. Flores’s objections provide considerable background information surrounding his relationship with the victim, trial, and subsequent conviction. D.E. 23. While extensive, the document does not articulate any challenge to the relevant facts and conclusions stated in the M&R. The delegation of pretrial proceedings to a magistrate judge under 28 U.S.C. § 636 is designed so that the district court is presented only with specific objections to dispositive matters. The district court’s review is not intended to be a second bite at the apple. *Freeman v. Cnty. of Bexar*, 142 F.3d 848, 852 (5th Cir. 1998). Consequently, objections must be specific in complaining of the magistrate judge’s analysis of the case. FED. R.CIV. P. 72(b)(2). Because Flores merely

reargues his case and does not point to any specific error in the M&R, he has failed to state cognizable objections.

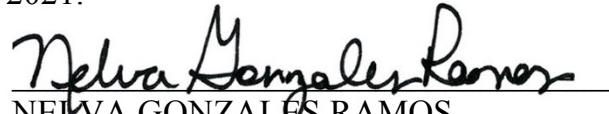
Therefore, the Court reviews the M&R only for clearly erroneous factual findings and conclusions of law. After a careful review, the Court finds that the M&R's finding and conclusions are not clearly erroneous and OVERRULES Flores's objections.

Certificate of Appealability. The Court agrees with the Magistrate Judge's finding that reasonable jurists would not find it debatable that Flores failed to state a claim for a violation of a constitutional right. The Court therefore DENIES a certificate of appealability.

CONCLUSION

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the M&R, Flores's objections, and all other relevant documents in the record, the Court DENIES the motion for evidentiary hearing (D.E. 26), OVERRULES Flores's objections (D.E. 27) and ADOPTS as its own the findings and conclusions of the Magistrate Judge (D.E. 23). Accordingly, the Court GRANTS Respondent's motion for summary judgment (D.E. 14) and DISMISSES Flores's petition (D.E. 2). The Court DENIES Flores's request for a certificate of appealability.

ORDERED this 5th day of February, 2021.



NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE